

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

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IN THE MATTER OF:

CERCLA Docket No. 2019-03  
MOTOROLA 52<sup>ND</sup> STREET SITE,  
OPERABLE UNIT 3  
Phoenix, Arizona

MILUM TEXTILE SERVICES,  
Respondent

Proceeding under Section 106(a)  
of the Comprehensive Environmental  
Response, Compensation, and Liability  
Act, 42 U.S.C. § 9606(a).

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**UNILATERAL ADMINISTRATIVE  
ORDER FOR REMEDIAL  
INVESTIGATION**

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## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Order ("Order") is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14A and 14-14B. This authority was further redelegated by the Regional Administrator of EPA Region 9 to the Assistant Director, Superfund by R9 14-14B (Mar 8, 2017).

2. This Order pertains to property located at 333 North 7th Avenue in Phoenix, Arizona, (the "Milum Facility" or the "Milum Site"). This Order requires Respondent to prepare and perform a remedial investigation (RI) to: determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site; in order to evaluate an imminent and substantial endangerment to the public health or welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

3. EPA has notified the State of Arizona (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## **II. PARTIES BOUND**

4. This Order applies to and is binding upon Respondent and its successors and assigns. Any change in ownership or control of the Site or change in the corporate or partnership status of a Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Order.

5. Respondent is jointly and severally liable for implementing all activities required by this Order.

6. Respondent shall provide a copy of this Order to each contractor hired to perform the Work required by this Order and to each person representing any Respondent with respect to the Site or the Work, and shall condition all contracts entered into under this Order upon performance of the Work in conformity with the terms of this Order. Respondent or its contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Order.

## **III. DEFINITIONS**

7. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in

this Order or in appendices to or documents incorporated by reference into this Order, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Order as provided in Section VIII.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“ADEQ” shall mean the Arizona Department of Environmental Quality” and any successor departments or agencies of the State.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Order” shall mean this Unilateral Administrative Order, all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

“Owner Respondent” shall mean any Respondent that owns or controls any Affected Property, including Milum Textile Services. The clause “Owner Respondent’s Affected Property” means Affected Property owned or controlled by Owner Respondent.

“Paragraph” shall mean a portion of this Order identified by an Arabic numeral or an upper or lower-case letter.

“Parties” shall mean EPA and Respondent.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Respondent” shall mean Milum Textile Services.

“Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in monitoring and supervising Respondent’s performance of the Work to determine whether such performance is consistent with the requirements of this Order, including costs incurred in reviewing any deliverable submitted pursuant to this Order, as well as costs incurred in overseeing implementation of this Order, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs.

“Section” shall mean a portion of this Order identified by a Roman numeral.

“Site” shall mean the Motorola 52<sup>nd</sup> Street Superfund Site, located in Phoenix, Maricopa County, Arizona, and listed on the EPA Superfund National Priorities List (“NPL”) on October 4, 1989.

“State” shall mean the State of Arizona.

“Statement of Work” or “SOW” shall mean the document describing the activities Respondent must perform to develop the RI for Milum Textile Services Site, as set forth in Appendix A to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order as are any modifications made thereto in accordance with this Order.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” shall mean: (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“Work” shall mean all activities and obligations Respondent is required to perform under this Order, except those required by Section XVI (Record Retention).

#### **IV. FINDINGS OF FACT**

8. The Motorola 52nd Street Superfund Site is located in Phoenix, Arizona. The Motorola 52nd Street Superfund Site was listed on the NPL on October 4, 1989, pursuant to Section 105 of CERCLA, 42 U.S.C. §9605. Releases of hazardous substances, primarily volatile organic compounds (“VOCs”), including trichloroethylene (“TCE”), tetrachloroethylene (“PCE”), and trichloroethane (“TCA”), from various facilities within the Site boundaries have contributed to groundwater contamination at the Site. Site response activities are being conducted in three operable unit (“OU”) study areas. The groundwater within OU3 is

contaminated with VOCs above Federal and State drinking water standards, including TCE, PCE, cis-1,2-dichloroethylene and 1,1-dichloroethylene. The Milum Facility or Milum Site is in the western portion of OU3.

9. Milum Textile Services owns and operates a facility located at 333 North 7th Avenue in Phoenix, Arizona, in a mixed residential, commercial, and industrial neighborhood. This Facility has operated at the current location since 1924. Certain of the Facility buildings had to be reconstructed in 1935 following a fire. Milum Textile Services has owned and operated the Facility since 1956.

10. Dry cleaning operations were conducted at the Facility from approximately 1924 to 1978. From 1935 to 1966, the operations used Stoddard Solvent, which was stored in two 500-gallon underground storage tanks ("USTs"). From 1956 to 1966, the Facility reports using approximately 200 to 300 gallons of Stoddard Solvent each week. From 1961 to 1978, PCE was used for Facility dry cleaning, which was reportedly used at a rate of up to 100 gallons each week.

11. Two dry cleaning machines located in the northern portion of the Facility used PCE from 1961 to 1978. The PCE was stored in 55-gallon drums, staged adjacent to each dry-cleaning machine for direct dispensing into the machines.

12. In July 1990, ADEQ conducted a Site Inspection ("SI") of the Milum Facility. The SI showed concentrations of PCE in soil vapor at the Facility ranging from 1,000 micrograms per cubic meter (" $\mu\text{g}/\text{m}^3$ ") to 5,000  $\mu\text{g}/\text{m}^3$ . In June 2005, ADEQ requested soil sampling at the Facility, which was conducted in August 2010, by Four Corners Environmental, Inc. ("Four Corners"), on behalf of Milum. Fourteen shallow, sub-slab soil samples were collected at 2 to 3½ feet for VOC analysis; no subsurface soil gas samples were collected at this time. In a 2010 Letter Report of the sampling, Four Corners reported findings of Stoddard Solvent, trimethylbenzenes, and PCE in the soil samples. PCE was detected at 0.70 parts per million ("ppm") at 1½ feet below the building slab (sample B-6), the location of the southern footing of former Dry Cleaning Unit #2. At 3 feet below the building slab at this same location, there was no PCE detected in soil; notably, fill material was observed at this location which was darker and discolored. Two VOCs - 1,2,4-trimethylbenzene and 1,3,5-trimethylbenzene - were detected in a sample at 3 feet below the building slab, underneath a two-inch deep concrete sump for Stoddard Solvent piping elbows.

13. The 2010 Letter Report recommended additional soil sampling to fully characterize the lateral and vertical extent of VOC impact to soil beneath the building. In 2011, Milum excavated soil at the former equipment footer locations and collected 17 soil samples in which PCE measured 6.5 mg/kg in one location 2 feet below ground surface ("bgs"). In 2014, Milum collected 20 soil samples and 13 soil gas samples. Soil data from sample location B-21 at 2 1/2 feet bgs showed PCE at 0.48 ppm. Soil gas data was collected along the sewer line in the dry cleaning operations area, former drain trench, and former drain pipe locations; this data showed PCE in 10 locations at levels ranging from 1.1  $\mu\text{g}/\text{m}^3$  to 8.3  $\mu\text{g}/\text{m}^3$ .

14. In May 2015, Milum provided EPA with three reports:

- A) *Final Report Evaluation of Potential Historical Environmental Impacts, Milum Textile Services Co. Facility, 333 North 7th Avenue, Phoenix, Arizona (RTC). The RTC was prepared for Milum Textiles Services Co. (Milum) by Four Corners Environmental, Inc.*
- B) *Report of Professional Environmental Services, Site Characterization and Sampling, Milum Textile Services Co. Facility, 333 North 7th Avenue, Phoenix, Arizona, prepared by Four Corners Environmental, Inc., March 31, 2014.*
- C) *Report of Professional Environmental Services, Limited Remediation and Sampling Activities, Milum Textile Services Co. Facility, 333 North 7th Avenue, Phoenix, Arizona, prepared by Four Corners Environmental, Inc., February 5, 2014.*

EPA reviewed these reports and provided comments on May 6 and June 15, 2015, identifying that further information is required to complete the investigation of the Milum facility. Specifically, additional soil vapor and soil sampling is necessary in the vicinity of the former dry-cleaning machines.

15. Respondent, Milum Textile Services, is incorporated in Arizona and is doing business in Phoenix, Arizona. Milum Textile Services has previously and currently owns and operates the Facility.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

16. Based on the Findings of Fact set forth above and the administrative record, EPA has determined that:

17. The Motorola 52<sup>nd</sup> Street Superfund Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

18. TCE, TCA, and PCE found at the Site, as identified in the Findings of Fact above, are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA.

19. The presence of hazardous substances at the Site or the past, present, or potential future migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

20. Respondent Milum Textile Services is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

21. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site. Respondent is the "owner" and/or "operator" of the Milum Facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1) and was the "owner" and/or "operator" of the Milum Facility at the time of disposal of hazardous substances at the

Facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

22. The actions required by this Order are necessary to protect the public health, welfare, or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a). The conditions at the Site may constitute an imminent and substantial endangerment to public health or welfare or the environment.

## **VI. ORDER**

23. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, Respondent is hereby ordered to comply with all provisions of this Order and any modifications to this Order, including all appendices to this Order and all documents incorporated by reference into this Order.

## **VII. OPPORTUNITY TO CONFER**

24. No later than 10 days after this Order is signed by the Assistant Director, Respondent may, in writing, a) request a conference with EPA to discuss this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions that Respondent may have regarding this Order, or b) notify EPA that Respondent intends to submit written comments or a statement of position in lieu of requesting a conference.

If a conference is requested, Respondent may appear in person or by an attorney or other representative. Any such conference shall be held no later than 7 days after the conference is requested. Any written comments or statements of position on any matter pertinent to this Order must be submitted no later than 7 days after the conference or 15 days after this Order is signed if Respondent does not request a conference. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Any request for a conference or written comments or statements should be submitted to:

Dustin Minor, Office of Regional Counsel (ORC)  
75 Hawthorne Street  
San Francisco, CA 94105  
[Minor.dustin@epa.gov](mailto:Minor.dustin@epa.gov)  
(415)972-3888

## **VIII. EFFECTIVE DATE**

25. This Order shall be effective 10 days after the Order is signed by the Assistant Director unless a conference is requested or notice is given that written materials will be submitted in lieu of a conference in accordance with Section VII (Opportunity to Confer). If a conference is requested or such notice is submitted, this Order shall be effective on the 10<sup>th</sup> day

after the conference, or if no conference is requested, the 10<sup>th</sup> day after written materials, if any, are submitted, unless EPA determines that the Order should be modified based on the conference or written materials. In such event, EPA shall notify Respondent, within the applicable 10-day period, that EPA intends to modify the Order. The modified Order shall be effective 5 days after it is signed by the Regional Administrator or his/her delegatee.

## **IX. NOTICE OF INTENT TO COMPLY**

26. On or before the Effective Date, Respondent shall notify EPA in writing of Respondent's irrevocable intent to comply with this Order. Such written notice shall be sent to EPA as provided in Paragraph 24. Respondent's written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defense(s) asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of any of Respondent's assertions. Failure of Respondent to provide such written notice within this time period shall, as of the Effective Date, be treated as a violation of this Order.

## **X. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS**

27. **Selection of Contractors, Personnel.** All Work performed under this Order shall be under the direction and supervision of qualified personnel. Within 30 days after the Effective Date, and before the Work outlined below begins, Respondent shall notify EPA in writing of the names, titles, addresses, telephone numbers, email addresses, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. If, after the commencement of Work, Respondent retains additional contractors or subcontractors, Respondent shall notify EPA of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least 7 days prior to commencement of Work by such additional contractors or subcontractors. EPA retains the right, at any time, to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within 14 days after EPA's disapproval. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," EPA/240/B-01/002 (Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

28. Within 7 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Order and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be

present on-Site or readily available during the Work. EPA retains the right to disapprove of a designated Project Coordinator who does not meet the requirements of Paragraph 27 (Selection of Contractors, Personnel). If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 14 days following EPA's disapproval. Respondent shall have the right to change its Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA 7 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Communications between Respondent and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the Project Coordinator. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

29. EPA has designated Rachel Loftin of EPA Region 9's Superfund Division as its Remedial Project Manager ("RPM"), and as its Project Coordinator. EPA will notify Respondent of a change of its designated Project Coordinator. Communications between Respondent and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the EPA Project Coordinator in accordance with Paragraph 38.a.

30. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator shall have the authority, consistent with the NCP, to halt, conduct, or direct any Work required by this Order, or to direct any other response action when s/he determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. Absence of the EPA Project Coordinator from the area under study pursuant to this Order shall not be cause for stoppage or delay of Work.

## **XI. WORK TO BE PERFORMED**

31. For any regulation or guidance referenced in the Order, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from EPA of the modification, amendment, or replacement.

32. Respondent shall conduct the RI and prepare all plans in accordance with the provisions of this Order, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance"), OSWER Directive # 9355.3-01 (October 1988), available at <https://semspub.epa.gov/src/document/11/128301>, "Guidance for Data Useability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at <http://semspub.epa.gov/src/document/11/156756>, and guidance referenced therein, and guidance referenced in the SOW. The Remedial Investigation (RI) shall consist of collecting data to characterize site conditions and determining the nature and extent of the contamination at or from the Facility or Site.

33. All written documents prepared by Respondent pursuant to this Order shall be submitted by Respondent in accordance with Section XII (Submission and Approval of

Deliverables), all such submittals will be reviewed and approved by EPA in accordance with Section XII (Submission and Approval of Deliverables). Respondent shall implement all EPA approved, conditionally approved, or modified deliverables.

a. **RI Work Plan.** Within 30 days after the Effective Date, Respondent shall submit an RI Work Plan to EPA for review and approval. Upon its approval by EPA pursuant to Section XII (Submission and Approval of Deliverables), the RI Work Plan shall be incorporated into and become enforceable under this Order. The RI Work Plan shall include the following appendices:

- (1) **Sampling and Analysis Plan.** This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP), as described in the SOW, that is consistent with the NCP, "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans (QA/R-5)," EPA 240/B-01/003 (March 2001, reissued May 2006), and "Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3," EPA/505/B-04/900A-900C (March 2005).
- (2) **Health and Safety Plan.** This plan shall ensure the protection of on-site workers and the public during performance of on-site Work under this Order. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <https://www.epa.gov/nscep/index.html>, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at <https://www.epaossc.org/HealthSafetyManual/manual-index.htm>. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. Respondent shall incorporate all changes to the plan provided by EPA and shall implement the plan during the pendency of the RI.

b. **Site Characterization.** Following EPA approval or modification of the RI Work Plan, Respondent shall implement the provisions of the Work Plan to characterize the Site. Respondent shall complete Site characterization and submit all deliverables in accordance with the schedules and deadlines established in this Order, the attached SOW, and/or the EPA-approved RI Work Plan.

c. **Draft RI Report.** Within 60 days after completion of the sampling required in the Work Plan, Respondent shall submit to EPA for review and approval pursuant to Section XII (Submission and Approval of Deliverables), a draft Remedial Investigation Report ("RI Report") consistent with the SOW, and RI Work Plan.

**34. Modification of the RI Work Plan**

a. If at any time during the RI process, Respondent identifies a need for additional data, Respondent shall submit a memorandum documenting the need for additional data to EPA's Project Coordinator within 7 days after identification. EPA in its discretion will determine whether the additional data will be collected by Respondent and whether it will be incorporated into deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify EPA's Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the RI Work Plan, EPA shall modify the RI Work Plan in writing accordingly or direct Respondent to modify and submit the modified RI Work Plan to EPA for approval. Respondent shall perform the RI Work Plan as modified.

c. EPA may determine that, in addition to tasks defined in the initially approved RI Work Plan, other additional work may be necessary to accomplish the objectives of the RI. Respondent shall perform these response actions in addition to those required by the initially approved RI Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a thorough RI.

d. Respondent shall complete the additional work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI Work Plan or written RI Work Plan supplement. EPA reserves the right to conduct the work itself, to seek reimbursement from Respondent for the costs incurred in performing the work, and/or to seek any other appropriate relief.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

**35. Off-Site Shipments**

a. Respondent may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to EPA's Project Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent shall also notify the state environmental official referenced above and EPA's Project Coordinator of any major changes in the shipment plan, such as a

decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the RI and before the Waste Material is shipped.

c. Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the SOW. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

36. **Meetings.** Respondent shall make presentations at, and participate in, meetings at the request of EPA during the preparation of the RI. In addition to discussion of the technical aspects of the RI, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

37. **Progress Reports.** In addition to the deliverables set forth in this Order, Respondent shall submit written monthly progress reports to EPA by the 15<sup>th</sup> day of the following month. At a minimum, with respect to the preceding month, these progress reports shall:

- a. describe the actions that have been taken to comply with this Order;
- b. include all results of sampling and tests and all other data received by Respondent;
- c. describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI completion; and
- d. describe all problems encountered in complying with the requirements of this Order and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

## **XII. SUBMISSION AND APPROVAL OF DELIVERABLES**

### **38. Submission of Deliverables**

#### **a. General Requirements for Deliverables**

- (1) Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to EPA's Project Coordinator at:

Rachel Loftin  
U.S. EPA Region 9, SFD 8-1  
75 Hawthorne Street  
San Francisco, CA 94105  
[Loftin.Rachel@epa.gov](mailto:Loftin.Rachel@epa.gov)

- (2) Respondent shall submit all deliverables required by this Order, the attached SOW, or any approved work plan in accordance with the schedule set forth in such plan.
- (3) Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 38.b. All other deliverables shall be submitted in the electronic form specified by EPA'S Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches. Respondent shall also provide paper copies of such exhibits.

**b. Technical Specifications for Deliverables**

- (1) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
- (2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (i) in the ESRI File Geodatabase format; and (ii) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
- (3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (4) Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

**39. Approval of Deliverables**

**a. Initial Submissions**

- (1) After review of any deliverable that is required to be submitted for EPA approval under this Order or the attached SOW, EPA shall:  
(i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. **Resubmissions.** Upon receipt of a notice of disapproval under Paragraph 39.a(1) (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 39.a(1), Respondent shall, within 14 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Respondent to correct the deficiencies; or (e) any combination of the foregoing.

c. **Implementation.** Upon approval, approval upon conditions, or modification by EPA under Paragraph 39.a (Initial Submissions) or Paragraph 39.b (Resubmissions), of any deliverable, or any portion thereof: (i) such deliverable, or portion thereof, will be incorporated into and enforceable under the Order; and (ii) Respondent shall take any action required by such deliverable, or portion thereof. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for penalties under Section XX (Enforcement/Work Takeover) for violations of this Order.

40. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA.

41. In the event that EPA takes over some of the tasks, but not the preparation of the Remedial Investigation Report ("RI Report"), Respondent shall incorporate and integrate information supplied by EPA into the RI report.

42. Respondent shall not proceed with any activities or tasks dependent on the following deliverables until receiving EPA approval, approval on condition, or modification of such deliverables: RI Work Plan and draft RI Report. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondent shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Order.

43. For all remaining deliverables not listed in Paragraph 42, Respondent shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval of the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity, or deliverable at any point during the Work.

44. **Material Defects.** If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 39.a (Initial Submissions) or 39.b (Resubmissions) due to such material defect, Respondent shall be deemed in violation of this Order for failure to submit such plan, report, or other deliverable timely and adequately. Respondent may be subject to penalties for such violation as provided in Section XX (Enforcement/Work Takeover).

45. Neither failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

### **XIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS**

46. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)," EPA/240/B-01/003, March 2001 (reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3," EPA/505/B-04/900A-900C (March 2005).

#### **47. Laboratories**

a. Respondent shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent pursuant to this Order. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the Quality Assurance Project Plan (QAPP) for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure" CIO 2105-P-02.1 (9/23/2014), available at <https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondent shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Order meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions," available at <https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements>, and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (<https://www.epa.gov/superfund/programs/clp/>), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (<https://www.epa.gov/hw-sw846>), "Standard Methods for the Examination of Water and Wastewater" (<http://www.standardmethods.org/>), and 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (<https://www.epa.gov/ttnamti1/airtox.html>).

b. Upon approval by EPA, Respondent may use other appropriate analytical methods, as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical methods are at least as stringent as the methods listed above, and (iii) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc.

c. Respondent shall ensure that all laboratories they use for analysis of samples taken pursuant to this Order have a documented Quality System that complies with ASQ/ANSI E4:2014 “Quality Management Systems for Environmental Information and Technology Programs – Requirements With Guidance for Use” (American Society for Quality, February 2014), and “EPA Requirements for Quality Management Plans (QA/R-2)” EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements.

d. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order are conducted in accordance with the procedures set forth in the approved QAPP.

#### **48. Sampling**

a. Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent shall notify EPA not less than 7 days in advance of any sample collection activity. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA’s oversight of Respondent’s implementation of the Work, and any such samples shall be analyzed in accordance with the approved QAPP.

b. Respondent shall submit to EPA, in the next monthly progress report as described in Paragraph 37 (Progress Reports) the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Order.

### **XIV. PROPERTY REQUIREMENTS**

49. **Agreements Regarding Access and Non-Interference.** Respondent shall with respect to Owner Respondent’s Affected Property: (i) provide EPA and its representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Order, including those listed in Paragraph 49.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will interfere with or adversely affect the implementation or integrity of the Work.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to EPA;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring response actions;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 66 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section XV (Access to Information); and
- (9) Assessing Respondent's compliance with the Order.

## **XV. ACCESS TO INFORMATION**

50. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondent's possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

### **51. Privileged and Protected Claims**

a. Respondent may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 51.b, and except as provided in Paragraph 51.c.

b. If Respondent asserts a claim of privilege or protection, Respondent shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent

shall retain all Records that they claim to be privileged or protected until EPA or a court determines that such Record is privileged or protected.

c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Order.

52. **Business Confidential Claims.** Respondent may assert that all or part of a Record provided to EPA under this Section or Section XVI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondent asserts business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

53. Notwithstanding any provision of this Order, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## **XVI. RECORD RETENTION**

54. During the pendency of this Order and for a minimum of 5 years after Respondent's receipt of EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Respondent must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

55. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 51 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA.

56. Within 30 days after the Effective Date, each Respondent shall submit a written certification to EPA's Project Coordinator that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification by the United States or the State, and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law. Any Respondent unable to so certify shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all Records.

## **XVII. COMPLIANCE WITH OTHER LAWS**

57. Nothing in this Order limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

58. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

## **XVIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

59. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify EPA's Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at (800) 300-2193 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, EPA reserves the right to pursue cost recovery.

60. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify EPA's Project

Coordinator, or, in the event of his/her unavailability, the Regional Duty Officer at (800) 300-2193 and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

61. For any event covered under this Section, Respondent shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

### **XIX. PAYMENT OF RESPONSE COSTS**

62. Upon EPA's written demand, Respondent shall pay EPA all Response Costs incurred or to be incurred in connection with this Order. On a periodic basis, EPA will send Respondent a bill requiring payment of all Response Costs incurred by the United States with respect to this Order that includes a Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors.

63. Respondent shall make all payments within 30 days after receipt of each written demand requiring payment. Payment shall be made to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number 09BE-OU34 and the EPA docket number for this action.

#### **For ACH payment:**

Respondent shall make payment to EPA by Automated Clearinghouse (ACH) to:

500 Rivertech Court  
Riverdale, Maryland 20737  
Contact – John Schmid 202-874-7026 or REX, 1-866-234-5681  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

and shall reference Site/Spill ID Number 09BE-OU34 and the EPA docket number for this action.

**For online payment:**

Respondent shall make payment at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to Respondent by EPA.

**If Respondent has difficulty making EFT, ACH, or online payments, you may substitute the following:** Respondent shall make payment by official bank check made payable to "EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, Site/Spill ID Number 09BE-OU34, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
PO Box 979076  
St. Louis, MO 63197-9000

64. At the time of payment, Respondent shall send notice that payment has been made to

Lisa Ouyang  
U.S. EPA Region 9, SFD 7-5  
75 Hawthorne Street  
San Francisco, CA 94105  
[Ouyang.Lisa@epa.gov](mailto:Ouyang.Lisa@epa.gov)

and to the EPA Cincinnati Finance Office by email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov), or by mail to

EPA Cincinnati Finance Office  
26 W. Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number 09BE-OU34 and the EPA docket number for this action.

65. In the event that the payments for Response Costs are not made within 30 days after Respondent's receipt of a written demand requiring payment, Respondent shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the written demand and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section. Respondent shall make all payments required by this Paragraph in the manner described in Paragraphs 63 and 64.

## **XX. ENFORCEMENT/WORK TAKEOVER**

66. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondent to civil penalties of up to \$55,907 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43,091, 40 C.F.R. Part 19.4. In the event of such willful violation, or failure or refusal to comply, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. Respondent may also be subject to punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

## **XXI. RESERVATIONS OF RIGHTS BY EPA**

67. Nothing in this Order shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Order shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not paid by Respondent.

## **XXII. OTHER CLAIMS**

68. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

69. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

70. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), or 40 C.F.R. § 300.700(d).

71. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

### **XXIII. INSURANCE**

72. No later than 7 days before commencing any on-site Work, Respondent shall secure, and shall maintain for the duration of this Order, commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Order. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondent in furtherance of this Order. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the Milum Textile Services Facility, Motorola 52<sup>nd</sup> Street Superfund Site, Phoenix, Arizona and the EPA docket number for this action.

### **XXIV. MODIFICATION**

73. The EPA Project Coordinator may modify any plan or schedule or the SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA within 7 days, but shall have as its effective date the date of EPA's Project Coordinator's oral direction. Any other requirements of this Order may be modified in writing by signature of the Assistant Director, Superfund Division, Region 9.

74. If Respondent seeks permission to deviate from any approved Work Plan or schedule or the SOW, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving approval from the EPA Project Coordinator pursuant to Paragraph 73.

75. No informal advice, guidance, suggestion, or comment by EPA's Project Coordinator or other EPA representatives regarding any deliverables submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

### **XXV. DELAY IN PERFORMANCE**

76. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and email to the EPA Project Coordinator within 48 hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any

such delay. Within 7 days after notifying EPA by telephone and email, Respondent shall provide to EPA written notification fully describing the nature of the delay, the anticipated duration of the delay, any justification for the delay, all actions taken or to be taken to prevent or minimize the delay or the effect of the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

77. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of Paragraph 76 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

## **XXVI. NOTICE OF COMPLETION OF WORK**

78. When EPA determines that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including Payment of Response Costs and Record Retention, EPA will provide written notice to Respondent. If EPA determines that any Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the RI Work Plan, if appropriate, in order to correct such deficiencies within 14 days after receipt of the EPA notice. The modified RI Work Plan shall include a schedule for correcting such deficiencies. Within 30 days after receipt of written approval of the modified RI Work Plan, Respondent shall implement the modified and approved RI Work Plan and shall submit a modified draft RI Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified RI Work Plan shall be a violation of this Order.

## **XXVII. ADMINISTRATIVE RECORD**

79. EPA has established an administrative record that contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays at the EPA offices in Region 9. To review the administrative record, please contact (415) 947-8717 to make an appointment. An index of the administrative record is attached.

80. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondent shall submit to EPA documents developed during the course of the RI upon which selection of the remedial action may be based. Upon request of EPA, Respondent shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of EPA, Respondent shall additionally submit any previous studies conducted under state, local, or other federal authorities that may relate to selection of the remedial action, and all communications between Respondent and state, local, or other federal authorities concerning selection of the remedial action.

## XXVIII. SEVERABILITY

81. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

It is so ORDERED.

BY: *APL Chant* ACTING FOR  
Angeles Herrera, Assistant Director  
Region 9  
U.S. Environmental Protection Agency

DATE: 11/16/10



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9  
75 Hawthorne Street  
San Francisco, CA 94105-3901**

**APPENDIX A**

**STATEMENT OF WORK**

**UNILATERAL ADMINISTRATIVE ORDER FOR**

**REMEDIAL INVESTIGATION**

**MILUM TEXTILE SERVICES FACILITY  
333 NORTH 7<sup>TH</sup> AVENUE  
PHOENIX, AZ**

**1.0 INTRODUCTION**

This Statement of Work ("SOW") for Region 9 Unilateral Administrative Order No. 2019-03 ("UAO") outlines the work to be performed by Milum Textile Services ("Respondent") at the Milum Textile Services Facility ("Facility") located at 333 North 7th Avenue, Phoenix, Arizona, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). The Facility is situated within the third operable unit (OU3) study area of the Motorola 52nd Street Superfund Site ("Site").

This Remedial Investigation ("RI") will be conducted to determine if the Facility is or has been a source to groundwater, soil, soil gas, or indoor air contamination associated with the Motorola 52nd Street Superfund Site Contaminants of Concern ("COCs").

The RI SOW general requirements are provided in UAO Section XI. WORK TO BE PERFORMED, and the specific work to be conducted is summarized below.

**2.0 WORK TO BE CONDUCTED**

1. Further investigative work is required for soil and soil gas in the vicinity of the former dry cleaning machines. The additional sampling locations are shown on the attached maps (Figures 3 and 5). Specifically, the additional sampling / investigation should include:

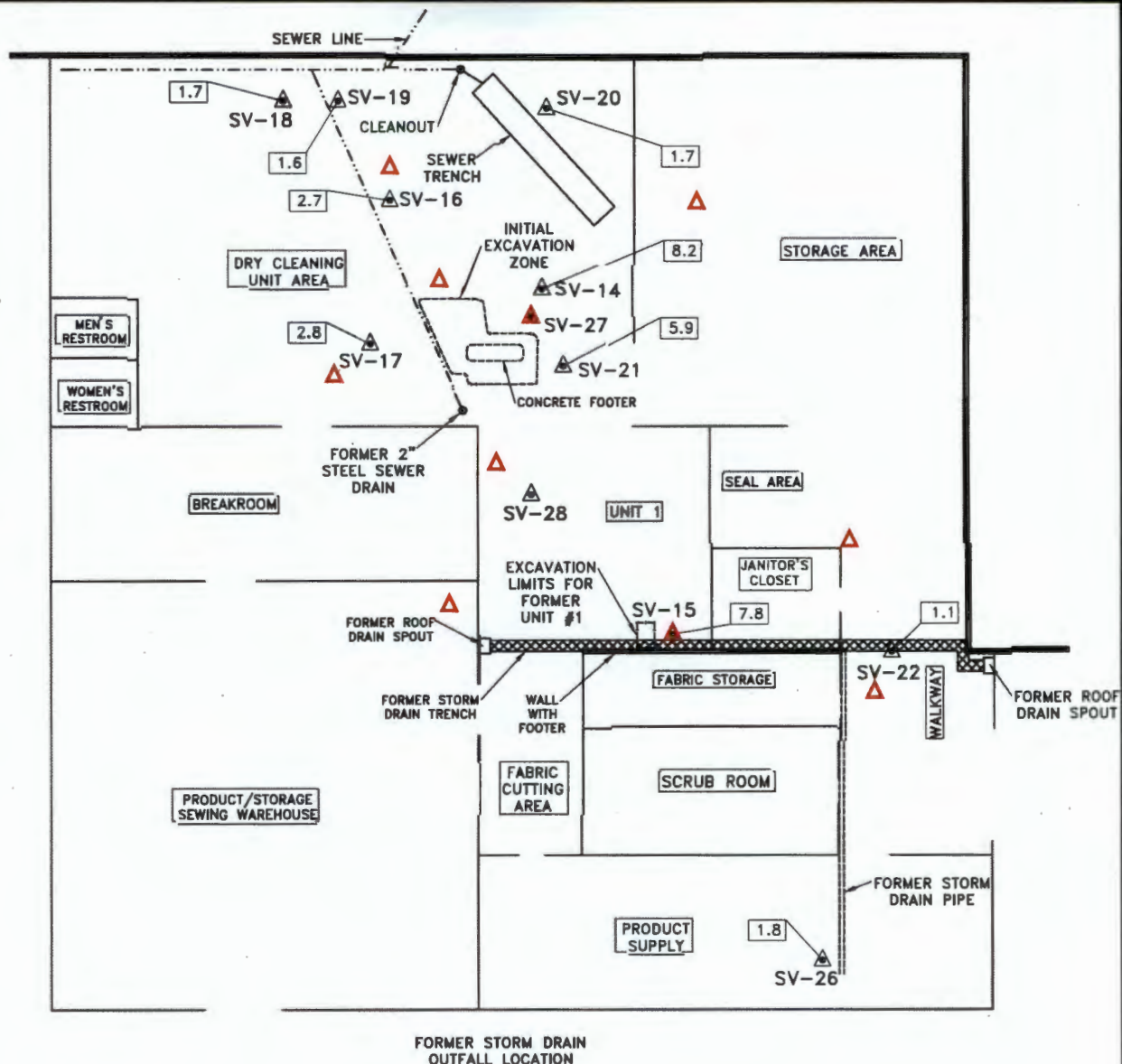
- 10 soil gas sample locations between 10' - 15' bgs in the vicinity of the former machines (Fig 3).

To characterize the area, deeper soil gas samples need to be collected at the location of sidewall sample Unit 2-N2-2 FT. While deeper samples were collected at nearby boring B-27, this boring is a potential lateral bounding location. The 10 soil gas sample locations are shown on Figure 3.

- 2 deeper soil sample locations at 5' feet bgs directly below the prior soil samples with the highest concentrations (Fig 5).

To vertically define the soil concentrations at depth, new soil sample locations need to be collected at prior soil sample locations Unit 2-N1-2 and Unit 2-N2-2.

- If data shows elevated levels of VOCs, additional, limited deeper soil vapor samples may be required (Fig 3).
2. Provide drawings to EPA showing the locations and flow directions of the sanitary sewers in the vicinity of the facility. This is important information because the machines exhausted separator water to the sanitary sewers.
  3. Prior to sample collection, a Work Plan must be submitted for EPA's review. The Work Plan, at a minimum, needs to include proposed sampling methods, locations, analyses, quality assurance/quality control methods and the rationale for proposed sampling locations as required by UAO Section XI. **WORK TO BE PERFORMED.**



# LEGEND

- EXTERIOR WALL
- INTERIOR WALL
- APPROXIMATE SOIL GAS SAMPLE LOCATION AND IDENTIFICATION
- SOIL GAS CONCENTRATIONS IN  $\mu\text{g}/\text{m}^3$
- ▲ PRELIMINARY SOIL GAS SAMPLE LOCATION (15' BGS)
- ⊕ POSSIBLE SOIL GAS WELL LOCATION - IF REQUIRED

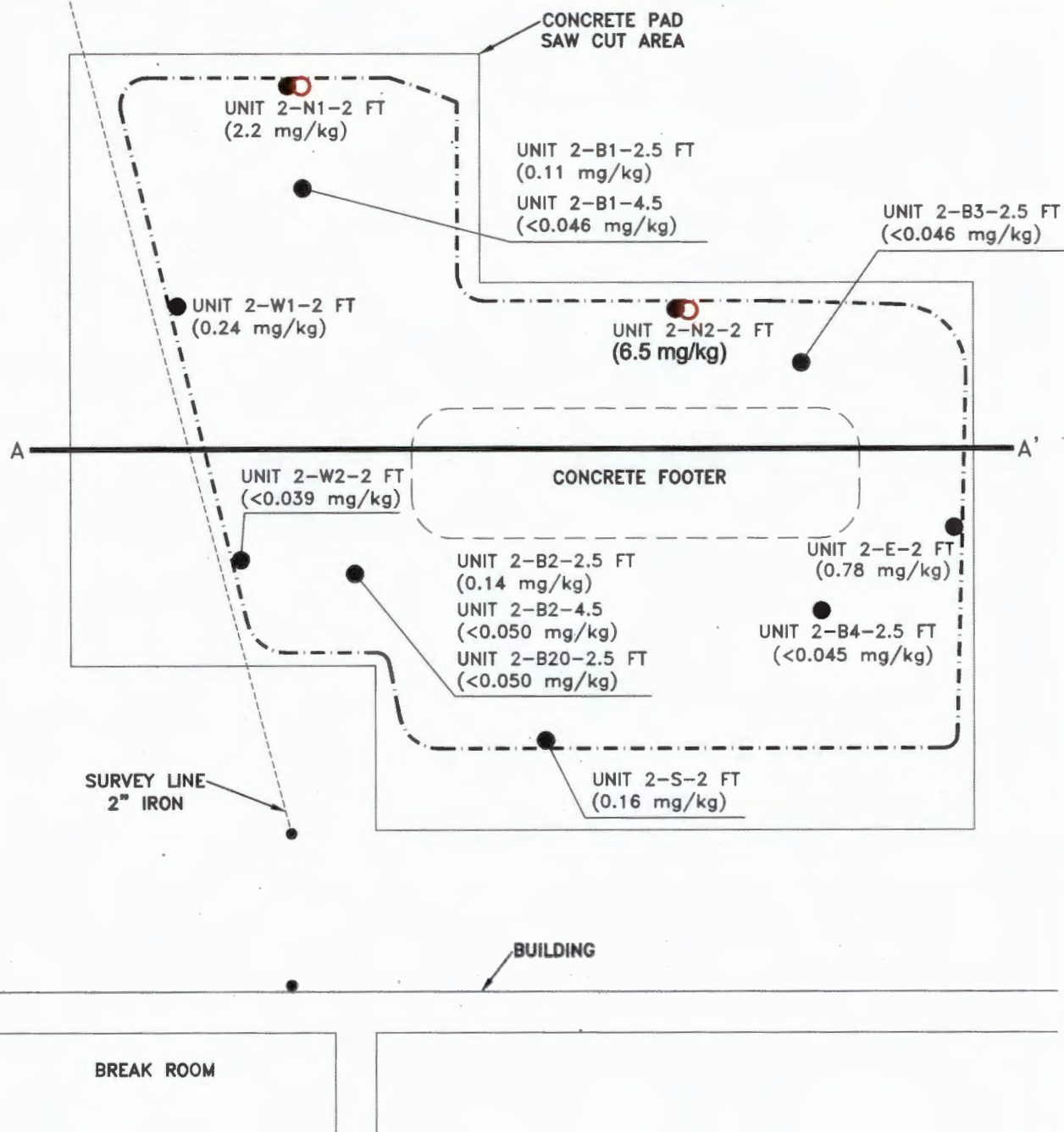
NOTE THAT LOCATIONS MAY NEED TO CHANGE DUE TO ACCESS

SOURCES: ADEQ, 1990, SITE INSPECTION REPORT, MILUM TEXTILE SERVICES, 333 N. 7TH AVENUE, PHOENIX, ARIZONA 85001, EPA ID# ASC983466095, STATE ID # 586, DATED AUGUST 31, 1990.  
FCE, 2010, REPORT OF PROFESSIONAL ENVIRONMENTAL SERVICES, LIMITED PHASE II SAMPLING ACTIVITIES, MILUM TEXTILE SERVICES FACILITY, FCE PROJECT NO. 10078A, DATED SEPTEMBER 24, 2010.



**Figure 3  
SITE MAP WITH  
SOIL GAS SAMPLE  
LOCATIONS**

FCE Project Name:  
Site Characterization  
Milum Textile Services  
333 North 7th Avenue  
Phoenix, Arizona  
FCE Project No: 10078D  
Date: 3/2014  
Prepared By: G. Dozer



## LEGEND

- FORMER UNIT #2 LIMIT OF EXCAVATION
- SOIL SAMPLE LOCATION WITH DEPTH AND ANALYTICAL RESULT FOR TETRACHLOROETHENE (PCE) — BOLD WHERE APPLICABLE RESIDENTIAL SOIL REMEDIATION LEVEL (RSRL)

○ DEEPER SOIL SAMPLING LOCATION

A — A' LINE OF CROSS-SECTION (SEE FIGURE 6)



0 FEET 2

SCALE

SOURCE: FCE FIELD NOTES, 2011



**Four Corners  
Environmental Inc.**

**Figure 5**

**FORMER DRY CLEANING  
UNIT #2, EXCAVATION  
AND SAMPLE LOCATIONS**

|                        |                     |
|------------------------|---------------------|
| FCE Project Name:      | Limited Remediation |
| Milum Textile Services |                     |
| 333 North 7th Avenue   |                     |
| Phoenix, Arizona       |                     |
| FCE Project No:        | 10078C              |
| Date:                  | 1/2014              |
| Prepared By:           | G. Dozer            |